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AM-888/1-1010

EXAMINER

ART UNIT PAPER NUMBER

1763

8

DATE MAILED: 11/01/99

MICHAEL B. LITVINOFF, M.D.
LEGAL ATTORNEY
APPLIED MATERIALS, INC.
3050 BOWERS AVENUE
SANTA CLARA, CA 95051

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on 8-20-99 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ _____

Part II SUMMARY OF ACTION

- ☒ Claims 1-30 + 46 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
- ☐ Claims _____ have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims 1-30 + 46 are rejected.
- ☐ Claims _____ are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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Claims 1-12, 15-30 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima, Sivaramakrishnan, and Siegele in view of Lankford or Maruhashi for the reasons stated in the previous office action.

Claims 13 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references cited above, taken in further view of Yamaguchi and Stauffer for the reasons stated in the previous office action.

Applicants have argued that neither Lankford or Maruhashi suggest the use of low nickel steel for use with "liquid phosphorous". First, it is noted that the claims do not recite the use of liquid phosphorous. The claims recite liquid phosphorous precursor compounds. Secondly, it is noted that Lankford and Maruhashi do provide a generic teaching for the use of low nickel steel in general, for any use requiring corrosion resistant steel. Because of these prior art teachings, one skilled in the art is prima facie entitled to choose these materials as materials of construction in a wide variety of apparatus, including the type of apparatus contemplated by the present applicants. A proper showing of unexpected results commensurate in scope with the claims as written has not yet been presented on the record by applicants. It is also noted in this regard that the claims as written are not limited to the use of liquid phosphorous precursor compounds. The recitation of an intended use in the preamble of an apparatus claim does not so limit the apparatus claim. See Ex Parte Weiss, 160 USPQ 425, Ex Parte Masham, 2 USPQ2d 1647, In re Benner and McMullen, 82 USPQ 49 and In re Young, 25 USPQ 69. Therefore, any argument for unexpected

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results based on the intended use of liquid phosphorous precursor compounds is not commensurate in scope with the claims as written.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Bueker whose telephone number is (703) 308-1895.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

R. Bueker
RICHARD BUEKER
PRIMARY EXAMINER
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